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In the
Supreme Court of the United States

OCTOBER TERM, 1974

No. 73-7077

JOAN G. RANDALL,
PETITIONER,

v.

PETER GOLDMARK, ET AL.,
RESPONDENTS.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF IN OPPOSITION

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TABLE OF CONTENTS

	Page
Opinions Below	1
Jurisdiction	2
Questions Presented	2
Statutes Involved	2
Statement of the Case	2
Argument	5
The Petition Presents No Substantial Question Warranting Further Review by the Court	5
Petitioner's Constitutional Claims	5
Jurisdictional Issue Raised by Petitioner's Statutory Claim	8
The Merits of Petitioner's Statutory Claim	9
Conclusion	11

TABLE OF CITATIONS

Cases

Almenares v. *Wyman*, 453 F.2d 1075 (2nd Cir. 1971), *cert. den.* 405 U.S. 944 (1972)	8, 9
Baxter v. *Minter*, —— F. Supp., Civil Action No. 74-79-T, (D. Mass. July 19, 1974)	6
Dandridge v. *Williams*, 397 U.S. 471 (1970)	6
Duffany v. *Van Lare*, 373 F. Supp. 1060 (N.D.N.Y. 1973)	9
Gomez v. *Florida State Employment Service*, 417 F.2d 569 (5th Cir. 1969)	8
Hagans v. *Lavine*, —— U.S. ——, 94 S. Ct. 1372 (March 25, 1974)	7
Jefferson v. *Hackney*, 406 U.S. 535 (1972)	6
Taylor v. *Lavine*, 42 U.S.L.W. 2634 (2nd Cir. May 14, 1974)	8
Watts v. *Watts*, 314 Mass. 129, 49 N.E. 2d 609 (1943)	7

Page

Statutes

28 U.S.C. § 1331 9
§ 1343 8
§ 1343(3) 8
§ 1343(4) 8, 9
28 U.S.C. § 2101(c) 2
42 U.S.C. § 601 *et seq.* 2
§ 602 2
§ 602(a)(7) 2, 9
45 C.F.R. 233.20(a)(3)(ii)(c) 2, 9
Mass. General Laws, c. 208, § 37 7

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Opinions Below

The opinion of the United States District Court for the District of Massachusetts is reported at 366 F. Supp. 947 (D. Mass. 1973) and is set forth in Appendix B to the Petition for a Writ of Certiorari. The opinion of the United States Court of Appeals for the First Circuit is reported

at 495 F.2d 356 (1st Cir. 1974) and is set forth in Appendix B to the Petition.

Jurisdiction

The Judgment of the United States Court of Appeals for the First Circuit was entered on April 18, 1974. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 2101(c).

Questions Presented

1. Whether a family which is receiving the maximum amount of AFDC public assistance grants allowed by law can properly claim that it is being deprived of due process and denied equal protection of the laws.
2. Whether on the stipulated facts of this case Federal jurisdiction exists over petitioner's statutory claim based upon Title IV of the Social Security Act (42 U.S.C. § 601 *et seq.*).
3. Whether payments which directly defray the housing costs on a home where a family receiving AFDC assistance grants resides, may properly be considered income to, or a resource of, the family within the meaning of 42 U.S.C. § 602(a)(7).

Statutes Involved

The relevant provisions of 42 U.S.C. § 602 and 45 C.F.R. § 233.20(a)(3)(ii)(c) are included in Appendix A to the petition.

Statement of the Case

Petitioner lives with her two children in Peabody, Massachusetts. From the time her husband abandoned her in September, 1971 until the present, petitioner and her children have been receiving Aid to Families with Dependent

Children (AFDC) assistance grants from the Commonwealth of Massachusets, through its Department of Public Welfare (the Department). Petitioner's family is entitled to a $103 shelter allowance as part of its assistance payments.

The house where petitioner and her children have resided at all times material to this case is owned by petitioner and her husband as tenants by the entirety. Since he abandoned petitioner in September, 1971, petitioner's husband has not resided in the house. The mortgage and tax payments on the house total $184 per month.

On June 19, 1972, the Essex County Probate Court entered a decree of separation as to petitioner and her husband. The decree provided in part that petitioner's husband pay $100 per month towards the mortgage on the house where petitioner and her children reside. The probate court ordered that these payments be made directly to petitioner.

On or about August 22, 1972, petitioner was notified by the Department's Peabody Welfare Service Office that her AFDC grants were to be reduced to reflect the $100 payments her husband was making towards the mortgage on their house. Petitioner thereupon requested a departmental hearing relative to the validity of the proposed reduction.

While she was awaiting the hearing, petitioner's decree of separation was amended. The amended decree in pertinent part ordered petitioner's husband to make his $100 mortgage payments payable directly to the bank holding the mortgage on the house where petitioner and her children reside.

After hearing, petitioner's departmental appeal was denied. The hearing officer ruled in effect that the Department properly could reflect the mortgage payments of her husband in the computation of the AFDC assistance grants due petitioner and her children. Petitioner did not seek review of the Department's decision in state superior

court as was her right. Instead, she filed a Complaint in the United States District Court for the District of Massachusetts.

Petitioner's Complaint alleged in effect that the Department's decision to reduce her family AFDC assistance grants because of her husband's mortgage payments denied her equal protection of the laws, deprived her of due process, and violated applicable provisions of federal statutes and regulations. Petitioner's motion for a temporary restraining order was denied after hearing. The court (Murray, D.J.) was "not satisfied that (petitioner) has shown a reasonable likelihood of prevailing on the merits on the issues of the complaint . . ." Subsequently, the court (Tauro, D.J.) denied respondents' motion to dismiss the Complaint. The case was then submitted to the court on a stipulation of agreed facts. On November 13, 1973, the court entered a judgment ordering that respondents be enjoined from reducing petitioner's AFDC grants by the mortgage payments of her husband. The court ruled that petitioner's equal protection claim conferred federal jurisdiction, and then resolved petitioner's pendent statutory claim in her favor.

On respondents' appeal from the district court judgment, the Court of Appeals for the First Circuit reversed the decision of the district court and remanded the case with instructions to dismiss the Complaint. The court of apeals ruled that petitioner's constitutional claims were insufficient to confer federal jurisdiction and were without merit. The court further ruled that there was no federal jurisdiction over petitioner's statutory claim. In addition, notwithstanding these jurisdictional rulings adverse to petitioner, the court of appeals reviewed her statutory claim and concluded that it was without merit.

Argument

THE PETITION PRESENTS NO SUBSTANTIAL QUESTION WARRANTING FURTHER REVIEW BY THIS COURT.

The decision of the court of appeals is clearly correct and presents no reason for further review in this Court. Petitioner's constitutional claims derive no support from the stipulated facts in this case and are foreclosed by decisions of this Court. Both courts below were in agreement in their jurisdictional rulings on petitioner's statutory claim. These rulings are supported by the express language of the jurisdictional statutes here in issue, the legislative history surrounding these statutes, and in part by other federal court decisions. Furthermore, a common sense reading of the applicable federal statute and regulations demonstrates that petitioner's statutory claim is clearly without merit.

PETITIONER'S CONSTITUTIONAL CLAIMS.

Petitioner's equal protection claim is based upon her assertion that the Department of Public Welfare will deduct estranged husbands' shelter payments only up to the maximum shelter allowance statutorily allowed an AFDC-recipient wife. In petitioner's situation there is no dispute that this amount is $103. Petitioner in effect contends that she is being treated unconstitutionally in relation to a similarly situated recipient whose separated husband could contribute the full amount of mortgage payments — in this case $184.

As the court of appeals noted, and as petitioner must *per force* concede, the Department, with respect to shelter, is subject to the "limited obligation of providing all AFDC recipients whose family situation is comparable to

that of the (petitioner) with $103 worth of shelter." 495 F.2d at 358. (Petition, p. 38) Petitioner is in fact receiving this amount — $100 from her separated husband and $3 from the Department. Petitioner cannot seriously argue that the Department may not consider third party contributions in computing her AFDC budget. 495 F.2d at 358 and cases cited. (Petition, p. 38) Accordingly, where petitioner is receiving what she is statutorily entitled to, she cannot complain on equal protection grounds that other families, also receiving their due entitlements, are able to reside in a shelter somewhat higher in value through fortuitous circumstances. There can be no equal protection violation where as here the Department treats all recipients uniformly and equally, and for reasons outside its control occasional disparities might arise. *Dandridge* v. *Williams,* 397 U.S. 471 (1970); *Jefferson* v. *Hackney,* 406 U.S. 535 (1972). What petitioner is really complaining about in equal protection terms is the decision of the Department to limit shelter allowances in petitioner's situation to $103 as opposed to $184. This Court has repeatedly recognized that states have wide latitude in setting benefit levels under public assistance programs. *Dandridge* v. *Williams, supra; Jefferson* v. *Hackney, supra.* See also, *Baxter* v. *Minter,* —— F. Supp. ——, Civil Action No. 74-79-T, (D. Mass. July 19, 1974) (Tauro, D.J.) (decision of Department to limit Emergency Assistance grants to defined situations did not give rise to an equal protection claim). Establishing AFDC shelter allowances at existing levels is more than warranted by the Commonwealth's interest in allocating its limited resources to insure that all recipients receive minimum shelter allowances. Moreover, respondents submit that petitioner does not seek equal treatment but favored treatment. Affording petitioner the relief she seeks would arguably place her in a preferred position relative to similarly situated families

where no estranged husband is available to contribute shelter payments, or where a husband is unable to make any payments.

For the foregoing reasons, we submit that petitioner's equal protection claim is clearly without merit. This result must obtain even if her claim is measured against the standard set forth in *Hagans* v. *Lavine*, —— U.S. ——, 94 S. Ct. 1372 (March 25 1974). Where a case is submitted on an agreed statement of facts, determining whether a constitutional claim is "substantial" for purposes of resolving a pendent statutory claim, inevitably involves a consideration of the merits. In any event, petitioner's suggestion that the court of appeals' disposition of her equal protection claim conflicts with this Court's holding in *Hagans* raises a non-existent issue in view of the court of appeals' decision to reach the merits of her statutory argument. Having rejected her statutory claim, it clearly was appropriate for the court of appeals to resolve petitioner's equal protection argument, rather than apply irrelevant standards pertinent to pendent jurisdiction. Petitioner's suggestion that the court of appeals' decision conflicts with *Hagans* places her in the position of complaining that the court of appeals reached the merits of her equal protection claim.

Petitioner alleges that the Department is depriving her of due process by establishing an irrebuttable presumption that the "$100 mortgage payments made directly to the mortgagee are only disguised support payments for petitioner and her children, which can be converted to her use in finding other lodging as soon as is necessary." Petition, pp. 8-9. If petitioner obtains other lodging and her situation changes, she may petition both the probate court and Department for appropriate relief. See, *e.g.* G.L. c. 208, § 37; *Watts* v. *Watts*, 314 Mass. 129, 133, 49 N.E.2d 609, 612 (1943). Her claim in the lower courts was to

the effect that the Department was conclusively presuming that her husband's mortgage payments are available to her. The undisputed facts in this case establish that these payments *are* defraying her shelter costs and that no facts are being presumed against her. See *Taylor* v. *Lavine*, 42 U.S.L.W. 2634 (2d Cir. May 14, 1974). For example, petitioner has never been precluded from demonstrating *inter alia* that she is not living in the house in question; that other persons are residing therein so that all of her husband's payments should not be reflected in her budget; or that the $100 payments do not apply to certain members of her family. Petitioner's variation on her irrebuttable presumption argument, raised for the first time in this Court, was not considerel in the courts below and is predicated on events that have not taken place—namely her moving out of her present lodgings.

JURISDICTIONAL ISSUES RAISED BY PETITIONER'S STATUTORY CLAIM.

Both courts below correctly rejected petitioner's claim that the Social Security Act conferred federal jurisdiction pursuant to 28 U.S.C. § 1343. Since the Social Security Act is not an act "providing for equal rights," the express language of § 1343(3) defeats petitioner's jurisdictional argument. There is unanimity among the circuits on this point. 495 F.2d at 359 and cases cited. (Petition, p. 34) Petitioner's argument based upon § 1343(4) derives support from a footnote in a Fifth Circuit case, *Gomez* v. *Florida State Employment Service*, 417 F.2d 569, 580, n. 39 (5th Cir. 1969). The Fifth Circuit decision which, significantly, rested upon independent jurisdictional grounds, can hardly be considered a definitive pronouncement on this question, and has been rejected by the Second Circuit. *Almenares* v. *Wyman*, 453 F.2d 1075, 1082, n. 9

(2d Cir. 1971), *cert. den.* 405 U.S. 944 (1972). In any event, as the court of appeals correctly noted, the unequivocable legislative history of § 1343(4) refutes petitioner's argument based upon this jurisdictional statute. Furthermore, acceptance of petitioner's argument would be tantamount to eliminating the jurisdictional amount requirement for any federal question — a result hardly intended by Congress in view of the clear legislative history surrounding this jurisdictional statute. 495 F.2d at 360. (Petition, p. 35) See also *Duffany* v. *Von Lare,* 373 F. Supp. 1060, 1063-1066 (N.D. N.Y. 1973).

Petitioner's argument that her statutory claim satisfies the $10,000 jurisdictional requirement of 28 U.S.C. § 1331 was rejected by both courts below. These rulings necessarily involve factual determinations, and, on the undisputed facts of this case, it is submitted that these decisions are not only correct, but hardly present a sufficient question warranting review by this Court.

It is noteworthy that the jurisdictional issues based upon petitioner's statutory claim are particularly inappropriate for further review by this Court in view of the decision of the court of appeals to reach the merits of her statutory claim. The unanimous jurisdictional rulings of the courts below in effect represent an alternative ground for the court of appeals decision.

THE MERITS OF PETITIONER'S STATUTORY CLAIM.

Petitioner's ultimate statutory claim raises the question whether the Department may reflect the mortgage payments of petitioner's husband in her budget by considering the payments as either available income or an available resource within the meaning of 42 U.S.C. § 602 (a) (7) and enabling regulations. 45 C.F.R. § 233.20(a)(3)(ii)(c) (1972). Although leaving open the question of whether such payments constituted available income, the court of appeals concluded that the payments constituted

an available resource within the meaning of federal law. 495 F.2d at 361. (Petition, pp. 37-38) We submit that this result is supported by a common sense reading of the federal statute and accompanying regulations. The Court of Appeals concluded that third party payments constitute available resources where they "directly benefit an AFDC recipient in such a manner that they are actually used to defray expenses which such recipient would otherwise incur." *Id.* (Petition, p. 38) This common sense test is consonant with the overall objective of the categorical assistance programs that recipients only be reimbursed for uncompensated need. Where petitioner needs $184 for shelter, she cannot claim that payments which meet $100 of this expense do not benefit her or are not available to her. Her husband's mortgage payments could properly be considered income passing through her as a conduit to the bank, or a resource reducing her housing costs.

Significantly, the original separation decree between petitioner and her husband required that his mortgage payments be made directly to petitioner. Petitioner appears to concede that the Department could properly reflect these payments in her budget. The amended decree requiring that such payments be made directly to the bank does not make the money any less "available" to petitioner. In each instance the money meets $100 of her shelter needs. While the "availability" of these funds may be more obvious in the situation where petitioner directly receives the money in hand, her practical benefits under each form of the decree are identical and require a similar resolution of the federal statutory question.

Petitioner's problem stems from the fact that her shelter need of $184 is more than she is entitled to. Where she is receiving her maximum entitlement, the Commonwealth is under no obligation to subsidize her in the life-style she had been maintaining prior to her separation from her

husband. Taken to its extreme, petitioner's reading of the applicable statute and regulations would require the Department to contribute towards the shelter of a wife whose separated husband was paying $500 to a mortgagee or landlord where the actual carrying charges on the lodgings in question were $584.

Conclusion

The Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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